



Senate

General Assembly

January Session, 2009

File No. 248

Senate Bill No. 884

Senate, March 26, 2009

The Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING EMPLOYMENT TAX CREDITS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 12-217ii of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2009, and*
3 *applicable to income years commencing on or after January 1, 2009*):

4 (a) As used in this section:

5 (1) "Commissioner" means the Commissioner of Economic and
6 Community Development;

7 (2) "Income year" means, with respect to entities subject to the
8 insurance premiums tax under chapter 207, the corporation business
9 tax under this chapter or the utilities company tax under chapter 212,
10 the income year as determined under each of said chapters, as the case
11 may be;

12 (3) "Taxpayer" means a person subject to tax under chapter 207, this

13 chapter or chapter 212;

14 (4) "New job" means a full-time job which (A) did not exist in this
15 state prior to a taxpayer's application to the commissioner for an
16 eligibility certificate under this section for a job creation credit, and (B)
17 is filled by a new employee;

18 (5) "New employee" means a person hired by the taxpayer to fill a
19 new full-time job. A new employee does not include a person who was
20 employed in Connecticut by a related person with respect to the
21 taxpayer during the prior twelve months;

22 (6) "Full-time job" means a job in which an employee is required to
23 work at least thirty-five or more hours per week. A full-time job does
24 not include a temporary or seasonal job;

25 (7) "Related person" means (A) a corporation, limited liability
26 company, partnership, association or trust controlled by the taxpayer,
27 (B) an individual, corporation, limited liability company, partnership,
28 association or trust that is in control of the taxpayer, (C) a corporation,
29 limited liability company, partnership, association or trust controlled
30 by an individual, corporation, limited liability company, partnership,
31 association or trust that is in control of the taxpayer, or (D) a member
32 of the same controlled group as the taxpayer; and

33 (8) "Control", with respect to a corporation, means ownership,
34 directly or indirectly, of stock possessing fifty per cent or more of the
35 total combined voting power of all classes of the stock of such
36 corporation entitled to vote. "Control", with respect to a trust, means
37 ownership, directly or indirectly, of fifty per cent or more of the
38 beneficial interest in the principal or income of such trust. The
39 ownership of stock in a corporation, of a capital or profits interest in a
40 partnership, limited liability company or association or of a beneficial
41 interest in a trust shall be determined in accordance with the rules for
42 constructive ownership of stock provided in Section 267(c) of the
43 Internal Revenue Code of 1986, or any subsequent corresponding
44 internal revenue code of the United States, as from time to time

45 amended, other than paragraph (3) of said Section 267(c).

46 (b) (1) There is established a jobs creation tax credit program
47 whereby a taxpayer who creates at least ten new jobs in Connecticut
48 may be allowed a credit against the tax imposed under chapter 207,
49 this chapter or chapter 212, in an amount up to sixty per cent of the
50 income tax deducted and withheld from the wages of new employees
51 and paid over to the state pursuant to chapter 229.

52 (2) For each new employee, credits may be granted for five
53 successive years.

54 (3) The credit shall be claimed in the income year in which it is
55 earned. Any credits not used in a tax year shall expire.

56 (c) Any taxpayer planning to claim a credit under the provisions of
57 this section shall apply to the commissioner in accordance with the
58 provisions of this section. The application shall be on a form provided
59 by the commissioner, and shall contain sufficient information
60 concerning the number of new jobs to be created, feasibility studies or
61 business plans for the increased number of jobs, projected state and
62 local revenue that might derive as a result of the job growth and other
63 information necessary to demonstrate that there will be net benefits to
64 the economy of the municipality and the state. The commissioner shall
65 impose a fee for such application as the commissioner deems
66 appropriate.

67 (d) The commissioner shall determine whether (1) the taxpayer
68 making the application is eligible for the tax credit, and (2) the
69 proposed job growth (A) is economically viable only with use of the
70 tax credit, (B) would provide a net benefit to economic development
71 and employment opportunities in the state, and (C) conforms to the
72 state plan of conservation and development prepared pursuant to
73 section 16a-24. The commissioner may require the applicant to submit
74 such additional information as may be necessary to evaluate the
75 application.

76 (e) (1) The commissioner, upon consideration of the application and
77 any additional information the commissioner requires, may approve
78 the credit application, in whole or in part, if the commissioner
79 concludes that the increase in the number of jobs is economically
80 viable only with the use of the tax credit and that the revenue
81 generated due to economic development and employment
82 opportunities created in the state exceeds the credit and any other
83 credits to be taken. If the commissioner disapproves an application, the
84 commissioner shall specifically identify the defects in the application
85 and specifically explain the reasons for the disapproval. The
86 commissioner shall render a decision on an application not later than
87 ninety days after the date of its receipt by the commissioner.

88 (2) The total amount of credits granted to all taxpayers shall not
89 exceed ten million dollars in any one fiscal year.

90 (3) A credit under this section may be granted to a taxpayer for not
91 more than five successive income years.

92 (4) The commissioner may combine approval of a credit application
93 with the exercise of any of the commissioner's other powers, including,
94 but not limited to, the provision of other forms of financial assistance.

95 (f) Upon approving a taxpayer's credit application, the
96 commissioner shall issue a credit allocation notice certifying that the
97 credits will be available to be claimed by the taxpayer if the taxpayer
98 otherwise meets the requirements of this section. No later than thirty
99 days after the close of the taxpayer's income year, the taxpayer shall
100 provide information to the commissioner regarding the number of new
101 jobs created for the year and the income tax deducted and withheld
102 from the wages of such new employees and paid over to the state for
103 such year. The commissioner shall issue a certificate of eligibility that
104 includes the taxpayer's name, the number of new jobs created, and the
105 amount of the credit certified for the year. The certificate shall be
106 issued by the commissioner sixty days after the close of the taxpayer's
107 income year or thirty days after the information is provided,
108 whichever comes first.

109 (g) The commissioner shall, upon request, provide a copy of the
110 certificate of eligibility issued under subsection (f) of this section to the
111 Commissioner of Revenue Services.

112 (h) (1) If (A) the number of new employees on account of which a
113 taxpayer claimed the credit allowed by this section decreases to less
114 than the number for which the commissioner issued an eligibility
115 certificate during any of the four years succeeding the first full income
116 year following the issuance of an eligibility certificate, and (B) those
117 employees are not replaced by other employees who have not been
118 shifted from an existing location of the taxpayer or a related person in
119 this state, the taxpayer shall be required to recapture a percentage of
120 the credit allowed under this section on its tax return, as determined
121 under the provisions of subdivision (2) of this subsection. The
122 commissioner shall provide notice of the required recapture amount to
123 both the taxpayer and the Commissioner of Revenue Services.

124 (2) If the taxpayer is required under the provisions of subdivision
125 (1) of this subsection to recapture a portion of the credit during (A) the
126 first of such four years, then ninety per cent of the credit allowed shall
127 be recaptured on the tax return required to be filed for such year, (B)
128 the second of such four years, then sixty-five per cent of the credit
129 allowed for the entire period of eligibility shall be recaptured on the
130 tax return required to be filed for such year, (C) the third of such four
131 years, then fifty per cent of the credit allowed for the entire period of
132 eligibility shall be recaptured on the tax return required to be filed for
133 such year, (D) the fourth of such four years, then thirty per cent of the
134 credit allowed for the entire period of eligibility shall be recaptured on
135 the tax return required to be filed for such year.

136 (i) (1) On and after July 1, 2009, and for income years commencing
137 on or after January 1, 2009, any credit allowed pursuant to this section
138 may be sold, assigned or otherwise transferred, in whole or in part, to
139 one or more taxpayers, provided no credit, after issuance, may be sold,
140 assigned or otherwise transferred, in whole or in part, more than three
141 times.

142 (2) If a taxpayer sells, assigns or otherwise transfers a credit under
143 this section to another taxpayer, the transferor and transferee shall
144 jointly submit written notification of such transfer to the commissioner
145 not later than thirty days after such transfer. If such transferee sells,
146 assigns or otherwise transfers a credit under this section to a
147 subsequent transferee, such transferee and such subsequent transferee
148 shall jointly submit written notification of such transfer to the
149 commission not later than thirty days after such transfer. The
150 notification after each transfer shall include the credit voucher number,
151 the date of transfer, the amount of such credit transferred, the tax
152 credit balance before and after the transfer, the tax identification
153 numbers for both the transferor and the transferee, and any other
154 information required by the commissioner. Failure to comply with this
155 subdivision will result in a disallowance of the tax credit until there is
156 full compliance on the part of the transferor and the transferee, and for
157 a second or third transfer, on the part of all subsequent transferors and
158 transferees.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	12-217ii

CE *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Revenue Serv., Dept.	GF - Revenue Loss	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill permits companies who qualify for the job creation credit to sell their credits¹ to other taxpayers. To the degree that this increases the amount of credits claimed under the \$10 million annual cap, this will result in a General Fund revenue loss from the three taxes for which it is available.

Since the credit was created, the Department of Economic and Community Development (DECD is responsible for administering the credit) has issued a total of \$2 million in credits to three companies. It is currently anticipated that these credits will be taken over the next six years. As of 3/20/09, DECD has indicated that about \$330,000 in credits could be claimed in FY 10 and \$385,000 could be claimed in FY 11.

The bill has no fiscal impact to the DECD to track such transfers.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹ Under current law, the job creation credit is available under the Corporation Tax, the Insurance Premiums Tax and the Utility Companies Tax. A credit can be issued

OLR Bill Analysis**SB 884*****AN ACT CONCERNING EMPLOYMENT TAX CREDITS.*****SUMMARY:**

This bill makes job creation tax credits transferable, in whole or in part, to one or more taxpayers. The credits may be sold, assigned, or otherwise transferred up to three times, beginning July 1, 2009, for income years beginning on or after January 1, 2009. By law, the credit must be claimed in the income year in which the company earned it, or it expires.

EFFECTIVE DATE: July 1, 2009 and applicable to income years beginning on or after January 1, 2009.

JOB CREATION TAX CREDIT***Transferring Credits***

When a transfer occurs, the seller and buyer must jointly notify the Department of Economic and Community Development (DECD) commissioner within 30 days and provide (1) the credit voucher number, (2) the transfer date, (3) the amount of credits transferred, (4) the tax credit balance before and after the transfer, (5) the tax identification numbers of both parties, and (6) any other information the commissioner requires. Violation of the notice requirement disallows the credits until the parties comply.

Although the Department of Revenue Services (DRS) grants the tax credit, the bill does not require the DECD commissioner to notify DRS of the transfer.

for the same employee over 5 successive years but that credit must be taken in the year in which it was granted. The annual cap for the credit is \$10 million.

Recapture Provision

By law, unchanged by the bill, a taxpayer claiming a job creation tax credit is in default if the number of new employees falls below that for which it claimed credits and they are not replaced by other new employees (excluding employees transferred from another location or from a related party). The taxpayer must repay ("recapture") the credit according to the following schedule: 90% of the credit if the company defaults after one year, 65% after two, 50% after three, and 30% after four. The DECD commissioner must give both the taxpayer and the DRS commissioner notice of the repayment amount. Presumably, the recapture provision would apply to whichever taxpayer claims the credit, including a transferee.

BACKGROUND***Job Creation Tax Credit***

By law, companies that create at least 10 new jobs in the state may be allowed a tax credit of up to 60% of the state income tax withheld from the new employees' wages for up to five successive years. The credit applies against corporation, utility company, and insurance premium taxes. Total credits for all eligible companies are limited to \$10 million per fiscal year.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 20 Nay 0 (03/10/2009)